large were acting together with a common intention to put the complainant in fear of injury with a view to committing extortion and that in furtherance of an intention common to all of them the complainant was put in such fear. For these reasons, I am satisfied that the charge offended against the principle set out in the above case. It is true that in that case the failure to frame the charge with specific reference to section 34 of the Penal Code was held to have occasioned no failure of justice. That case can be distinguished as it was tried in the High Court where the appellant was represented by counsel who had the advantage of studying the depositions in the case and where the evidence given by the prosecution witnesses did not differ materially from that given at the preliminary enquiry. As His Lordship observed, "it is clear that from the beginning in spite of the error of the charge, he (the accused) knew perfectly well what the case for the prosecution was going to be and what in fact it was."

These considerations, however, cannot apply to a trial in the Sessions Court. In the result the appellant succeeds on this ground of his appeal. His conviction is quashed and the sentence is set aside.

The 1st accused has not appealed. As my observations in respect of the appellant would also apply to him, in exercise of my powers of revision I quash his conviction and set aside his sentence.

Appeal allowed.

Solicitors: *Allen, Gledhill & Ball.*

FATIMAH v. WOK

[F.C. (Barakbah Ag. L.P., Ismail Khan, Azmi JJ.) June 24, 1964]

[Kota Bharu — Federal Court Civil Appeal No. 38 of 1964]

Land Laws — Land officer issuing possessory title to appellant — Legal title vested in respondent as owner — Order by judge to set aside possessory title — Whether proper — Kelantan Land Settlement Ordinance, 1955, ss. 3, 4, 5, 7, 8, 10.

This was appeal against the judgment of Hashim J. (*ante* p. 35) in which the learned judge held that the respondent was the lawful owner of lots 882 and 883 in the Mukim of Bechah Palas and directed that "the registration of the order made by the assistant district officer under section 8(1) of the Kelantan Land Settlement Ordinance be cancelled." The main ground of appeal was that the facts before the assistant district officer were apparently the same as that before the learned judge and that therefore the learned judge should have come to the same finding as the assistant district officer.

Held: under section 8 of the Kelantan Land Settlement Ordinance, the land officer has to make a finding of fact as to who was in possession of the land but under section 10 of the same Ordinance the judge has to go into the question of legal title. There was ample evidence in this case that the respondent was the legal owner of the land under the Land Enactment even though the appellant had the possessory title.

Observations on the Kelantan Land Settlement Ordinance, 1955.

FEDERAL COURT.

Hashim Abdul Hamid for the appellant.

H. L. Wrigglesworth for the respondent.

Azmi J. (delivering oral judgment): This is an appeal against the judgment of Hashim J. in which he held that the respondent in this appeal Wok binti Mat Diah alias Che Saamah is the lawful owner of lots 883 and 882 in the Mukim Bechah Palas and directed "that the registration of the order made by the assistant district officer under section 8(1) of the Kelantan Land Settlement Ordinance be cancelled."

The facts of the case might be summarized as follows: These two pieces of lands originally of one lot No. 456 were the subject matter of an enquiry by the assistant district officer under section 8(1) of the Kelantan Land Settlement Ordinance (hereinafter referred to as "the Ordinance"). After the enquiry the assistant district officer made an order that the appellant was in possession of the land. Against this order the respondent appealed to the district officer but her appeal was dismissed on 1st of May, 1960. She subsequently appealed to the High Court and the appeal was again dismissed by Hepworth J. on the 14th January, 1961.

On the 26th April, 1961 the respondent filed a suit under section 10 of the Ordinance claiming that she was the registered owner of the land. Before Hashim J. Wok binti Mat Diah the respondent stated that she was the legal owner of the land under the Kelantan Land Enactment. In support she produced two abstracts of title for the two pieces of land, one being dusun land and the other padi land. She planted padi and fruits and rubber on the land and after 5 years she allowed her son Jusoh to occupy the land and work it until the Land Settlement Scheme was introduced in Pasir Mas. Subsequently Jusoh allowed the appellant's father Awang Hamat who was then Penghulu of Kampong Bunut Susu to work on the land on the pawa system. In 1947 Wok charged the land to Penghulu Yunus and the charge was discharged in 1958. Incidentally this is confirmed by the two copies of abstracts of title she produced in court. She denied that she sold the land to the appellant's mother for $600 just before the outbreak of the last war. Jusoh bin Loman corroborated the story of his mother. Penghulu Yunus gave evidence of the charge to him and of the subsequent discharge. Yusoff bin Ismail (P.W.4) stated that his land is adjacent to this land in dispute. He also stated that in 1958 he saw Jusoh work on the land.

The appellant Fatimah said that her mother bought the land for $600 before the war and she had been in occupation since. Her father Awang Hamat also said that his wife bought the land from the respondent and this fact he told Penggawa Yahya two years after his wife bought the land. Penggawa Yahya said that in the course of his duties in making enquiries for the purpose of the land settlement he visited this land and was told by Awang Hamat that he was in possession of the land and he instructed him to register his possession under the law. Abdullah bin Ali (D.W.4) said that he wanted to make a right of way between the lots 468 and 456 for which he got the permission of the appellant.

Hashim J. after reciting the facts as I have stated more or less as above then concluded that the evidence in favour of the respondent was overwhelming. He unfortunately did not elaborate the meaning of his finding. Probably, however, what he meant was that though there was evidence to show that the appellant was in possession of the land the respondent was the legal owner of the land under the Land Enactment. In any case it is my opinion on the facts that the allegation of a sale by the respondent to the appellant's mother before the war could hardly be supported because subsequent to the alleged sale the respondent charged the land in 1948 and discharged it 10 years later. This is confirmed as I have said by the registration of the charge and the subsequent discharge of the title.

Perhaps it is necessary to say something about the Kelantan Land Settlement Ordinance. This Ordinance is intended to simplify the procedure so as to ensure the work of bringing the registers of land transactions up to date within a comparatively short period. Sections 3, 4 and 5 lay down the procedure. The Ruler in Council declares an area to be a settlement area and calls upon any person claiming an interest to land therein to register a claim with the settlement officer (section 3(1)).

On a given date the settlement officer will go to the Settlement area and receives claims (section 4(1) & (2)). The recorded claims will be sent to the district officer and either he or his assistant subsequently examines the claims at a public enquiry. Where the officer considers that a claimant is not aware of adverse claim he will give claimant particulars thereof before the hearing.

After making his finding of fact the district officer will send it to the appropriate land registrar who will issue the appropriate documents including, when necessary, documents of possessory title.

Section 7 provides that where the registered proprietor (or an approved applicant) or some one holding under him is in possession the district officer will make a finding to this effect and instruct that if necessary a document of title be issued.

Section 8 provides for a case where a claim for possessory title is made against a land held by a registered proprietor or approved applicant. It was under this section that the appellant filed her claim for possessory title.

In reference to the land under dispute the assistant district officer held the enquiry under section 8(1) and as a result of which the appellant was given a possessory title. The respondent appealed against this order and finally the appeal came before Hepworth J. who with due respect quite rightly dismissed the appeal because the question to be decided was merely the question of possession and as the assistant district officer found that the appellant was in fact in possession he quite rightly did not think it right to interfere with that although it was obvious that the respondent had a good title under the Land Enactment to this land.

The respondent therefore brought this suit under section 10 which she could have done any time before the expiration of 3 years from the date of the registration of the possessory title and Hashim J. made the order that the respondent was the registered owner of the land under the Land Enactment. He therefore made an order that the possessory title be set aside. The appellant now appeals against that order.

There are several grounds of appeal but from what I understood from Che Hashim, counsel for the appellant, his main complaint was that the facts before the assistant district officer were apparently the same as before the judge and the learned judge therefore should have come to the same finding. I am sorry to say Che Hashim has misconceived the purport of section 10 of the Enactment. Under section 8 the land officer has to make a finding of fact as to who was in possession of the land but under section 10 the judge will go into the question of legal title. There is ample evidence in this case that the respondent was the legal owner of the land under the Land Enactment even though the appellant had the possessory title. For this reason in my opinion the appeal should be dismissed with costs.

Barakbah Ag. L.P. and **Ismail Khan J.** concurred.

Appeal dismissed.

Solicitors: *Hashim A. Hamid*; *Wrigglesworth & Co.*